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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,431	12/15/2000	Lorin Evan Ullman	AUS9-2000-0704-US1	1895

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EXAMINER

VU, THONG H

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/737,431

Applicant(s)

ULLMAN, LORIN EVAN

Examiner

Thong H Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 15 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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1. Claims 1-24 are pending. Claims 1,1,9,17 have been amended. The Final action is appropriate.

Response to Arguments

2. Applicant's arguments with respect to claims 1,9,17 under 102 rejections have been considered but are moot in view of the new ground(s) of rejection.

3. Applicant's arguments to Double Patenting Rejection have been fully considered but they are not persuasive. It was obvious the first associates means ('434) is equivalent to the first determining means ('431). Thus, the rejection is sustained.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/737,434. Although the conflicting claims are not identical, they are not patentably distinct from each other because

(Application 09/737,434, claim 10). A apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework;

discovering means for dynamically discovering a set of discovered endpoints within the distributed data processing system;

designating means for designating a plurality of discovered endpoints as mission critical endpoints;

first associating means for associating a mission critical twin endpoint with each mission critical endpoint, wherein a mission critical twin endpoint is a discovered endpoint that has a communication history with a mission critical endpoint with which the mission critical twin endpoint is being associated.

(Application 09/737,431, claim 9). An apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework;

discovering means for dynamically discovering endpoints within the distributed data processing system;

first determining means for determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card; and

assigning means for assigning a mission criticality characteristic to each discovered endpoint.

It was clearly that a critical twin endpoint or network node with two NIC, each network interface card connects to an endpoint or node (see '431, Fig 2G).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Schuster et al [Schuster, 6,584,490 B1].
6. As per claim 9, Schuster discloses an apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework [Schuster, management phase, discovered the endpoint, col 10 lines 16-32; configured the voice device, col 10 line 65-col 11 line 10];

discovering means for dynamically discovering endpoints within the distributed data processing system [Schuster, a programming device, col 7 lines 5-30; During the

setup phase, the location of the endpoint is discovered, col 10 lines 16-32; dynamic configuration, col 15 lines 44-50];

first determining means for determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card [Schuster, a first LAN and second LAN, col 12 lines 8-28, col 15 lines 19-42]; and

assigning means for assigning a mission criticality categorization to each discovered endpoint [Schuster, assigned categories, col 6 lines 6-12].

7. As per claims 10,11 Schuster discloses first designating means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards as a twin network interface card that is to be used for monitoring an associated network interface card [The twin or identical NIC is a first and second NIC, Schuster, a first LAN and second LAN, col 12 lines 8-28, col 15 lines 19-42]; and second designating means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is not to be used for monitoring [Schuster, assigned categories, col 6 lines 6-12].

8. As per claim 12, Schuster discloses monitoring means for monitoring discovered endpoints using the network management framework (i.e.: program) [Schuster, a programming device, col 7 lines 5-30].

9. As per claims 13,14 Schuster discloses determining, in response to a determination that a discovered endpoint is a mission critical endpoint, whether the mission critical endpoint is associated with a Mission critical twin endpoint; first performing means for performing, in response to a determination that the mission critical endpoint is associated with a mission critical twin endpoint, a polling operation on the mission critical twin endpoint; first updating means for updating a status indication parameter for the mission critical twin endpoint [Schuster, dynamically updated information, col 23 lines 24-44].

10. As per claim 15, Schuster discloses receiving means for receiving a request for an action on a target endpoint within the network management framework (i.e.: program) [Schuster, a programming device, col 7 lines 5-30].

11. As per claim 16 Schuster discloses determining, in response to a determination that the target endpoint is a mission critical endpoint, whether the target endpoint is associated with a mission critical twin endpoint; and rerouting means for rerouting, in response to a determination that the target endpoint is associated with a mission critical

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twin endpoint, the request for the action to the mission critical twin endpoint [Schuster, gateway, router, col 11 lines 40-60].

12. Claims 1-8 and 17-24 contain the similar limitations set forth of apparatus claims 9-16. Therefore, claims 1-8 and 17-24 are rejected for the similar rationale set forth in claims 9-16.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-24 are rejected under 35 U.S.C. § 103 as being unpatentable over Alkhatib [6,119,171] in view of Schuster et al [Schuster, 6,584,490 B1].

14. As per claim 9, Alkhatib discloses an apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework [Alkhatib, keep track of which version of the protocol the packet belong, col 5 lines 49-col 6 line 45];

discovering means for dynamically discovering endpoints within the distributed data processing system [Alkhatib, identify the connection on subsequent calls, col 8 lines 22-60];

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first determining means for determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card [Alkhatib, the Domain Name router includes two network interfaces, col 10 lines 22-53, Fig 6]; and

Alkhatib also discloses assigning a class, type and value [Alkhatib, col 11 lines 24-47]. However Alkhatib does not explicitly detail assigning a mission criticality categorization to each discovered endpoint.

In the same endeavor, Schuster discloses a system provides a service including assigning categories to user devices [Schuster, assigned categories, col 6 lines 6-12].

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the technique of assigning categories to network devices as taught by Schuster into Alkhatib's apparatus in order to utilize the programming device. Doing so would provide features and capabilities to manage the service over Internet.

15. As per claims 10,11 Alkhatib-Schuster disclose first designating means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards as a twin network interface card that is to be used for monitoring an associated network interface card; designating each of a plurality of network interface cards with a monitoring parameter indicating that

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each of the plurality of network interface cards is not to be used for monitoring

[Schuster, assigned categories, col 6 lines 6-12].

16. As per claim 12, Alkhatib-Schuster disclose monitoring means for monitoring discovered endpoints using the network management framework [Schuster, a programming device, col 7 lines 5-30].

17. As per claims 13,14 Alkhatib-Schuster disclose determining, in response to a determination that a discovered endpoint is a mission critical endpoint, whether the mission critical endpoint is associated with a mission critical twin endpoint; first performing means for performing, in response to a determination that the mission critical endpoint is associated with a mission critical twin endpoint, a polling operation on the mission critical twin endpoint; first updating means for updating a status indication parameter for the mission critical twin endpoint [Schuster, dynamically updated information, col 23 lines 24-44].

18. As per claim 15, Alkhatib-Schuster disclose receiving a request for an action on a target endpoint within the network management framework [Schuster, a programming device, col 7 lines 5-30].

19. As per claim 16, Alkhatib-Schuster disclose fourth determining means for determining, in response to a determination that the target endpoint is a mission critical

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endpoint, whether the target endpoint is associated with a mission critical twin endpoint; and rerouting means for rerouting, in response to a determination that the target endpoint is associated with a mission critical twin endpoint, the request for the action to the mission critical twin endpoint [Schuster, gateway, router, col 11 lines 40-60].

20. Claims 1-8 and 17-24 contain the similar limitations set forth of apparatus claims 9-16. Therefore, claims 1-8 and 17-24 are rejected for the similar rationale set forth in claims 9-16.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

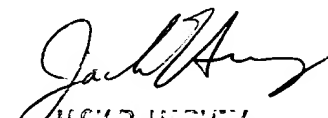
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thong Vu, whose telephone number is (571)-272-3904. The examiner can normally be reached on Monday-Thursday from 8:00AM- 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Jack Harvey*, can be reached at (571) 272-3896. The fax number for the organization where this application or proceeding is assigned is 703-872-9306

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval IPAIRI system. Status information for published applications may be obtained from either Private PMR or Public PMR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thong Vu
Patent Examiner
Art Unit 2142


JACK HARVEY
SUPERVISOR, PATENT EXAMINER

